CRITIQUE OF THE NOLASCO DECISION

by Atty. Jacinto Jimenez*

Just when the Supreme Court seemed to be on the way to recovery from its anemic stand on violations of human rights, it suffered a relapse when it promulgated its decision in the case of Nolasco, et al. vs. Pano, et al., G. R. No. 69803 on October 8, 1985.

Mila Aguilar-Roque, one of the petitioners in that case, had been charged with rebellion and subversion in separate cases before two military commissions. She was then at large.

On August 6, 1984 at around 9 a.m., the Constabulary Security Group applied for a search warrant to be served at her residence at 239-B Mayon Street, Quezon City for the seizure of documents, papers and other records of the Communist Party of the Philippines, the New People's Army, and the National Democratic Front.

At 11:30 a.m. on August 6, 1984, Mila Aguilar-Roque was arrested on board a public vehicle at the corner of Mayon Street and P. Margall Street, Quezon City.

At noon of the same day, armed with the search warrant, the Constabulary Security Group seized four hundred twenty-eight documents, a typewriter and two boxes from the premises at 239-B Mayon Street, Quezon City.

The City Fiscal of Quezon City charged Mila Aguilar-Roque with illegal possession of subversive documents.

Mila Aguilar-Roque questioned the validity of the search warrant served at her residence and moved to suppress in evidence the documents the Constabulary Security Group had seized.

The Supreme Court ruled that the search warrant was void, because it did not particularly describe the items to be seized and there was no probable cause for its issuance.

After handing down such pronouncement, the Supreme Court ruled that the documents seized could be used in evidence against Mila Aguilar-Roque despite the invalidity of the search warrant. The Supreme Court reasoned out:

> "Notwithstanding the irregular issuance of the search warrant and although, ordinarily, the articles seized under an invalid search warrant should be returned, they cannot be ordered returned in the case at bar to Aguilar-Roque. Some searches may be made without a warrant. Thus, Section 12, Rule 126, Rules of Court, explicitly provides :
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> 'Section 12. Search without warrant of person arrested. – A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense.'
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> "The provision is declaratory in the sense that it is confined to the search, without a search warrant, of a person who had been arrested. It is also a general rule that, as an incident of an arrest, the place or premises where the arrest was made can also be searched without a search warrant. In this latter case, 'the extent and reasonableness of the search must be decided on its own facts and circumstances, and it has been stated that, in the application of general rules, there is some confusion in the decisions as to what constitutes the extent of the place or premises which may be searched'. "What must be considered is the balancing of the individual's right to privacy and the public's interest in the prevention of crime and the apprehension of criminals.'
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> "Considering that AGUILAR-ROQUE has been charged with rebellion, which is a crime against public order; that the warrant for her arrest has not been served

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> for a considerable period of time; that she was arrested within the general vicinity of her dwelling; and that the search of her dwelling was made within a half hour of her arrest, we are of the opinion that, in her respect, the search at No. 239-B Mayon Street, Quezon City, did not need a search warrant, this, for possible effective results in the interest of oublic order."

Thus, the Supreme Court tried to justify the admissibility in evidence of the seized documents despite the invalidity of the search warrant on the ground that the search was incidental to an arrest and therefore there was no need for a search warrant. The Supreme Court quoted Corpus Juris Secundum and American Juris prudence to prop up its conclusion.

No amount of strained reasoning can support the erroneous conclusion of the Supreme Court.

First of all, the quotation from Corpus Juris Secundum is supposed to be a paraphrase of the rulings in the cases of U.S. vs. Thomson, 113 F2d 643; Papani vs. U. S., 84 F2d 160; and State vs. Adamas, 51 ALR 407.

A scrutiny of the original text of the decision of these three cases shows that the reliance of the Supreme Court on the quotation it cited from Corpus Juris Secundum is misplaced.

The ruling imputed by Corpus Juris Secundum to the decision in the case of U.S. vs. Thomson, 113 F2d 643 does not appear anywhere in its text. On the contrary, in that case the United States Circuit Court of Appeals held that the papers seized were inadmissible in evidence, because they had been seized for the sole purpose of gathering evidence to convict the defendants.

In the case of Papani vs. U.S., 84 F2d 160, the United States Circuit of Appeals that ruled the search of the dwelling of the accused was illegal and could not be justified as being incidental to the arrest of the accused. The court pointed out:

> "The government contends that the search in this case is justified as an incident to the arrest of Hebert. *Such contention is untenable because the search was not made at the place of arrest."*[1]

In that case, the accused was arrested while he was inside his car. After his arrest, his house was searched. This was exactly the situation in the case of Nolasco, et al. vs. Pano, et al., G.R. No. 69803, October 8, 1985. Mila Aguilar-Roque was on board a public vehicle at the corner of Mayon Street and P. Margall Street at the time she was arrested. Thirty minutes later, the Constabulary Security Group searched her house at 239-B Mayon Street, Quezon City.

In the case of State vs. Adams, 136 SE 703, the accused was arrested for possession of moonshine liquor. In another portion of his house, the arresting officers found a small quantity of moonshine liquor. It was not necessary to go to that part of the house to arrest the accused.

The West Virginia Supreme Court of Appeals ruled that the moonshine liquor was not admissible in evidence. Citing Cornelius on Search and Seizure, the court stressed:

> "While it is well settled that incidental to a lawful arrest an officer has the right to search the person of the individual arrested and seized any evidence tending to establish 'crime', whether it be one for which the arrest was made or any other,

the cases do not so clearly define how far an officer may go, in searching the room, premises or effects of the person arrested. The following principles, however, are well settled : (a) *If the arrest is made outside the home or rooming place of the arrested party the officer has no right to go to the place where he resides and make a search for incriminating evidence;* (b) the officers have no right to search any part of the residence of the arrest except the room where the arrest is made."[2]

Thus, all the cases cited in the passage in Corpus Juris Secundum support the stance of Mila Aguilar Roque rather than the conclusion of the Supreme Court.

In fact, if the Supreme Court had only turned the page of Corpus Juris Secundum, it would have come across the following passage, which shows the conclusion of the Supreme Court is wrong :

"If the arrest is made outside the person's home, the officer may not go to his place of residence to search it, although this has been held justifiable where the person is in flight from the house and was arrested a few feet from it, where he was taken inside at his request, or where the officer simply followed him into his house."[3]

Secondly, the quotation from American Jurisprudence cited by the Supreme Court is supposed to be a paraphrase of the ruling in the case of State vs. Johnson 230 A2d 831. What the Supreme Court of Rhode Island said in that case is that in serving a valid search warrant, a law-enforcing officer may use force to gain entrance. The Supreme Court of Rhode Island held :

"If the exigencies of the situation require entry without notice and demand, force may be used to breach and enter under the authority of a valid search warrant. If such a situation arises, the search is reasonable notwithstanding the forced entry. What must be considered is the balancing of the individual's right to privacy and the public's interest in the prevention of crime and the apprehension of criminals."[4]

The Supreme Court of Rhode Island did not rule in that case that a search can be made even without a search warrant on the basis of the principle of balancing of interests, as the Supreme Court tried to make it appear in the case of Nolasco, et al. vs. Pano, et al., G. R. No. 69803, October 8, 1985.

Besides, Section 3, Article IV of the Constitution which is presently in force provides :

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

Subsection 2, Section 4, Article IV of the Constitution which is presently in force reads:

"Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

By declaring that any item seized without any valid search warrant is inadmissible in evidence, the Constitution which is presently in force has already made its own balancing of interests. It tilts the balance in favor of the right to privacy. This leaves no room for the Supreme Court to make its own balancing of interests.

Thirdly, contrary to the claim of the Supreme Court, there is no confusion in the decisions as to the extent of the place that may be searched as an incident of a lawful arrest. It was settled in the landmark decision in the case of Chimel vs. California, 395 U.S. 752 that the search must be confined to the area within the immediate control of the person being arrested, that is, the area within which he can reach for a weapon or destroy evidence. Thus, in that case the United States Supreme Court declared :

"When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which arrestee might reach in order to grab a weapon or evidentiary items must of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. *There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' – construing that phrase to mean the area from which he might gain possession of a weapon or destructible evidence.*

"There is no comparable justification, however, for routinely searching any room other than that in which arrest occurs – or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant." [5]

Thus, in Shipley vs. California, 395 U.S. 818, the United States Supreme Court ruled that the law-enforcing officers, who arrested the accused fifteen or twenty feet away from his house, could not search his house as an incident to the arrest. The United States Supreme Court emphasized :

"But the Constitution has never been construed by this Court to allow the police, in the absence of an emergency, to arrest a person *outside* his home and then take him inside for the purpose of conducting a warrantless search."[6]

Likewise, in Vale vs. Louisiana, the United States Supreme Court held :

"We decline to hold that an arrest on the street can provide its own 'exigent circumstance' so as to justify a warrantless search of the arrestee's house."[7]

In fact, the pronouncement of the United States Supreme Court in the case of Chimel vs. California, 395 U.S. 752 is not really new. As early as 1925, the United States Supreme Court had declared:

> "Frank Agnello's house was several blocks distant from Alba's house, where the arrest was made. When it was entered and searched, the conspiracy was ended, and the defendants were under arrest and in custody elsewhere. That search cannot be sustained as an incident of the arrest."[8]

Accordingly, the United States Supreme Court repeatedly held that a search as an incident of a lawful arrest may be made only within the area within the immediate control of the person being arrested.[9]

Similarly, in James vs. Louisiana, the United States Supreme Court ruled

> "In the circumstances of this case, however, the subsequent search of the petitioner's home cannot be regarded as incident to his arrest on the street corner more than two blocks away."[10]

Since Mila Aguilar Roque was arrested on the street and her house was not her immediate control, its search without a valid search warrant cannot be considered as incidental to her arrest. Consequently, the documents seized at her house should have been declared inadmissible in evidence.

Fourthly, it is settled that in order that a search may be considered as incidental to a lawful arrest, it must be contemporaneous with the arrest.[11] The Constabulary Security Group searched the house of Mila Aguilar-Roque thirty minutes after her arrest, it cannot be considered incidental to her arrest.

The ruling in the case of Nolasco, et al. vs. Pano, G. R. No. 69803, October 8, 1983 is clearly erroneous. Like old soldiers, the martial law syndrome never dies.

NOTES

[1] Papani vs. U.S., 84 F2d 160, 163. (Italics supplied.)

[2] State vs. Adams, 136 SE 703, 704 (Italics supplied.)

[3] 79 C.J.S., Searches and Seizures, Sec. 67(d), p. 844. (Italics supplied.)

[4] State vs. Johnson, 230 A2d 831, 836.

[5] Chimel vs. California, 395 U.S. 752, 762-763. (Italics supplied.)

[6] Shipley vs. California, 395 U.S. 818, 820. (Italics supplied by the the United States Supreme Court.)

[7] 399 U.S. 30, 35.

[8] Agnello vs. U.S., 260 U.S. 20, 30-31.

[9] Stoner vs. California, 376 U.S. 483, 486; Preston vs. U.S., 736 U. S. 364, 367.

[10] 382 U. S. 36, 37.

[11] Preston vs. U. S., 736 U.S. 364, 367; Stoner vs. California, 376 U.S. 483, 487; James vs. Louisiana, 382 U.S. 36, 37; Duke vs. Taylor Implement Manufacturing Co., Inc., 391 U.S. 216, 220; U. S. vs. Chadwick, 433 U.S. 1, 15.